

Specialty Steel Service Company, Inc. d/b/a Sacramento Steel & Supply, Inc. and Iron Workers, Shopmen's Local 790, International Association of Bridge, Structural and Ornamental Iron Workers, AFL-CIO, Petitioner. Case 20-RC-16959

February 28, 1994

DECISION AND ORDER REMANDING

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND TRUESDALE

The National Labor Relations Board has considered an objection to an election held October 7, 1993,¹ and the Regional Director's report recommending disposition of it. The election was conducted pursuant to a Stipulated Election Agreement. The tally of ballots shows eight for and five against the Petitioner, with no challenged ballots.

The Board has reviewed the record in light of the Employer's exceptions and brief, and has adopted the Regional Director's findings and recommendations only to the extent consistent with this Decision and Order.

We find merit in the Employer's exceptions to the Regional Director's recommendation to overrule the Employer's objection for failure to timely submit supporting evidence. Section 102.69(a) of the Board's Rules and Regulations provides that the objecting party must submit supporting evidence 7 days after the last date on which objections could be timely filed, which in this case was October 21. It is undisputed that the Employer did not submit its evidence in writing to the Regional Office until October 22. The Employer contends, however, that it satisfied its burden to produce evidence by "presenting" its evidence in an October 19 telephone conversation with a Board agent investigating a concurrent unfair labor practice case. The Employer asserts that it informed the Board agent that the same evidence supported both its objection to the election and the concurrent unfair labor practice charge

and that the Board agent indicated that she would be interviewing the employees specified by the Employer in the conversation. The Board agent did not inform the Employer that it had to submit its evidence in writing before October 21.² A different Board agent telephoned the Employer on October 22 and informed it that its evidence was late, and the Employer "faxed" its evidence to the Regional Office that day.³

In the particular circumstances of this case, and especially given that the Employer may have been inadvertently misled by the Board agent in their October 19 conversation, and noting that Section 102.69(a) of the Board's Rules and Regulations affords the Regional Director some discretion in extending the time for the submission of evidence in support of objections, we agree with the Employer that its evidence presented in support of the objection should be considered. Accordingly, we shall remand the objection to the Regional Director for an investigation or hearing, as he deems appropriate.

ORDER

It is ordered that this case is remanded to the Regional Director for a supplemental report on the Employer's objection which may, at the Regional Director's discretion, be based on an investigation or a hearing. This supplemental report shall contain recommendations concerning whether the alleged conduct by employee Underwood constitutes conduct warranting the setting aside of the election.

IT IS FURTHER ORDERED that this case is referred to the Regional Director for Region 20 for the purpose of conducting the investigation or hearing as he may find necessary, and that the Regional Director is authorized to issue notice of any hearing.

² The Regional Office on October 13 sent a letter to the Employer informing it of its obligation to submit its evidence in support of its objection by October 21. The Employer asserts, however, that it did not receive the letter.

³ The affidavits submitted to the Region by the Employer are dated prior to the October 21 deadline, as well as the October 19 telephone conversation.

¹ All subsequent dates, unless otherwise noted, are in 1993.